

## **MINUTES**

### **MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON LOCAL GOVERNMENT**

**Call to Order:** By **CHAIRMAN DALE MAHLUM**, on February 13, 2001 at 3:00 P.M., in Room 335 Capitol.

#### **ROLL CALL**

##### **Members Present:**

Sen. Dale Mahlum, Chairman (R)  
Sen. John C. Bohlinger, Vice Chairman (R)  
Sen. Chris Christiaens (D)  
Sen. John Cobb (R)  
Sen. Jim Elliott (D)  
Sen. Bill Glaser (R)  
Sen. Duane Grimes (R)  
Sen. Don Hargrove (R)  
Sen. Ken Miller (R)  
Sen. Emily Stonington (D)  
Sen. Ken Toole (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Leanne Kurtz, Legislative Branch  
Mary Gay Wells, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

##### **Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 287, 1/23/2001  
SB 407, 1/23/2001  
SB 433, 1/23/2001

Executive Action: SB 181 DPAA  
HB 111 DPAA

**{Tape : 1; Side : A; Approx. Time Counter : 0}**

**EXECUTIVE ACTION ON HB 111**

**Motion:** SEN. CHRISTIAENS moved that HB 111 BE AMENDED  
**EXHIBIT**(los36a01) .

**Discussion:**

SEN. CHRISTIAENS explained that "reasonably address" be removed and insert "be commensurate with." This would allow local government to charge the fees that are commensurate with the activity. This is language that is consistent with the Dept. of Health and Human Services.

**Vote:** Motion that HB 111 AMENDMENT BE ADOPTED carried  
unanimously.

**Motion/Vote:** SEN. CHRISTIAENS moved that HB 111 DO PASS AS  
AMENDED. Motion carried unanimously.

**EXECUTIVE ACTION ON SB 181**

**Motion:** SEN. COBB moved that SB 181 BE AMENDED **EXHIBIT**(los36a02) .

**Discussion:**

SEN. COBB explained the amendment. It states that any human services for children or adults have the right to come in under this particular law. All groups are allowed by counties and municipalities to use bond proceeds and have the bank agree. If the banks don't think it is a good risk, they can say no.

**Vote:** Motion that SB 181 AMENDMENT BE ADOPTED carried  
unanimously.

**Motion/Vote:** SEN. COBB moved that SB 181 DO PASS AS AMENDED.  
Motion carried unanimously.

**HEARING ON SB 407**

**Sponsor:** SEN. DALE BERRY, SD 30, HAMILTON

**Proponents:** Tom Daubert, Representing U.S. Filter Operating  
Services, MT Solid Waste Contractors

**Opponents:** None

**Opening Statement by Sponsor:**

**SEN. DALE BERRY, SD 30, HAMILTON.** The bill asks that a city or town may extend, renew or amend an agreement for the supervision or operation of a physical plant that provides water, sewer or power services to the municipality without proceeding under public bidding procedures. These are existing contracts and they have been in business together. The people requesting this bill wanted to allow government to extend that contract without going through the bidding process.

**Proponents' Testimony:**

**Tom Daubert, Representing U.S. Filter Operating Services.** This company manages waste water treatment plants for cities and towns all over the country. The bill would leave it to the local government, if they had originally gone through the bidding process, to extend the contract if they so choose. This would save cities a great deal of money.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**SEN. JOHN COBB** said that a city or town could renew a contract for fifty years and there would be no way out of it. There would be no bidding and someone would have a monopoly. **Tom Daubert** answered in theory that would be possible. He couldn't imagine a city choosing to renew if they had a problem with the contract.

**SEN. COBB** said that once the contract has been awarded, and if no one could compete, that creates a monopoly. **Mr. Daubert** felt that the bill allowed a city to save money not having to put the contract out for bidding.

**SEN. COBB** maintained that once a company has it, they would have the contract. Nothing in state law makes a city extend or renew an agreement except possibly for a period of time. **Mr. Daubert** felt that an amendment could be put forward to restrict this power for a period of time.

**SEN. CHRIS CHRISTIAENS** inquired whether or not there are federal funds involved in some of these operations. **Mr. Daubert** did not know. He assumed that some might be partially federally funded.

**SEN. CHRISTIAENS** elaborated that the contracts he works with in a public transportation district, with federal funds involved, do

not allow him to go forth without competitive bidding. He could have a contract with up to three years of renewal and at the end of those three years, he must go back to the bidding process. If this bill would pass, the state would be in violation of federal law if federal funds are involved. **Mr. Daubert** suggested that if the city or county used federal funds, then they would follow the federal dictates.

**SEN. KEN TOOLE** was curious about how long, generally, the contracts are written for. **Mr. Daubert** replied for five years.

**SEN. DON HARGROVE** stated that he perceived the bill would allow the city to go to the bidding process whenever they decided.

**SEN. BERRY** responded yes. The bill would allow them to do this, not make them do this. If there were federal involvement, that would preclude them from the extension of a contract.

**Closing by Sponsor:**

**SEN. BERRY** closed. It would be unlikely for a city to give a fifty-year contract on a bid. It would be a good process and it would have good oversight.

**HEARING ON SB 287**

**Sponsor:** **SEN. EMILY STONINGTON, SD 15, BOZEMAN**

**Proponents:** **Tim Davis, Executive Director, MT Smart Growth Coalition**

**Robert Rasmussen, Helena**

**Bill Murdock, Gallatin County Commissioner**

**Jennifer Madgic, Planner, Gallatin County**

**Ann Hedges, MT Environmental Information Center**

**Marga Lincoln, Alternative Energy Resources**

**Organization**

**Sam Samson, Jefferson County Commissioner**

**Mike Griffith, former Lewis & Clark County**

**Commissioner, Helena**

**Linda Stoll, MT Assoc. of Planners, Missoula County**

**Harold Blattie, Stillwater County Commissioner**

**Jane Jelinski, MT Assoc. of Counties**

**Opponents:** **Dennis Lay, MT Assoc. of Registered Land Surveyors**

**Andy Skinner, Helena Property Owners Assoc.**

**Dave Wood, Helena**

**Pat Bauernfeind, Montana City**

**Darren Breckenridge, Proctor**

**Jeff Larson, Flathead County Planning Board**  
**Sarah Bauer, Clancy**  
**Gene Johnson, Stokes & Associates Consulting**  
**Engineers, Kalispell**  
**Larry Marshall, Helena**  
**Steven J. Reese, Reese Surveying, Ltd.**

**Opening Statement by Sponsor:**

**SEN. EMILY STONINGTON, SD 15, BOZEMAN.** Senate Bill 287 is a subdivision bill. In 1973, the legislature passed the Subdivision Planning Act. It designed and defined how land would be split and the rules that would govern splitting land and would provide local oversight of that in cases where fire and police protection were needed as well as road planning. One of the provisions of that original act was something called a family land transfer. The purpose of the family land transfer was to provide for agricultural families to have the ability to deed a small piece of land to their children for whatever reason. In recent years, that provision has been discovered to be a major loophole to avoid subdivision review. In Gallatin County it became very evident in the last couple of years and has been heavily abused. She read two articles from the local newspaper. The Legislative Audit Committee had a performance audit done on the subdivision review process and came out with some strong recommendations that this provision was being abused.

She lives in Bridger Canyon which is protected by the Bridger Canyon Zoning District Act which keeps this from happening to her. But people who live on a 30 acre ranchette could split off an acre right next door to her, give it to their children and within 10-14 days that child could have put it on the market. It would never have even undergone a minor subdivision review. They probably just wanted the money to put in their bank account. It wouldn't have any provisions for police or fire protection. No planning for roads would have been done to access that land. It is creating substantial problems for counties like hers.

She had amendments handed out **EXHIBIT (1os36a03)**. On the first page at the bottom, it strikes the provision that defines what an immediate family is. That is how family land transfers have been defined up till now. Immediate family meant spouse, children by blood or adoption and parents. On page three, the other amendments are three, four and five. In the body of the bill, on line 17, amendment three strikes the words "that do not create parcels of less" and substitute the words "when: (i) the remaining parcel that is not transferred is more." A family land transfer can still happen but there are going to be three caveats. The first caveat is this. If you are going to transfer

land under this provision, the remaining parcel has to be 20 acres or more. This allows ranchers to do this because they own a great deal of land--not just 20 acres. This only pertains to people who own 20 to 160 acres. If you own more than 160 acres, this bill would not affect you.

The second provision strikes the words "immediate family" and puts children by blood or adoption. The second caveat limits a split to children only.

The third caveat is after line 19, it reads: "the parties to the transaction enter into a covenant running with the land that prohibits the divided land from being transferred again within five years and that is revocable only by subjecting the division of land to the provisions of this chapter;".

She reiterated that the remaining parcel has to be more than 20 acres. It is applicable only to the children. There would be a covenant saying the land could not be resold for five years.

Her next handout gave further explanation of why SB 287 is good **EXHIBIT (los36a04)**. She asked the Gallatin County Planner what a minor subdivision review cost. It costs about \$450. In Gallatin County there are also impact fees that are applied when land is subdivided in minor or major subdivisions. Using this evasion of the Subdivision & Planning Act also allows people to evade the impact fees which goes to pay for the growth that occurs in the county.

### **Proponents' Testimony:**

**Tim Davis, Executive Director, MT Smart Growth Coalition.** The idea of passing land down in the family is very good but it is something that people should not be able to skirt around. It is essential for the community's health and for the land. Having people go through a minor subdivision review is not a problem.

**Robert Rasmussen, Helena.** He works for Lewis and Clark County. The original intent of the bill was to enable agricultural people the mechanism by which they could create parcels for family members who were associated with the family operation. It is used in estate planning to disburse real property interest to family members. In other counties, it is being abused. Lewis and Clark County does indicate a significant increase of this exemption since the elimination of the occasional sale exemption in 1993. Since 1985, 310 family transfers have been reviewed by the survey review committee. That included 92 family transfers from 1985 to 1992 and an increase of 218 since that time. Many counties have adopted exemption criteria in an effort to

distinguish legitimate use of this act. Even when there is not an apparent abuse, or even if there is an abuse evidenced by an immediate subsequent transfer, it is difficult for a county attorney to prosecute. The whole issue of exempt land divisions is contrary to the intent and purposes of the Subdivision Planning Act and it creates inequities between neighboring properties.

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**Bill Murdock, Gallatin County Commissioner.** They are in support of the bill. He liked the amendments. They are all for family transfer. The concern is with the intent. It is being abused. They had their county attorney do a swearing in. The applicant had to testify, under oath, that they would not abuse the exemption. This is not a bad way to go, but if the county attorney were to find out in six months that the applicant did in fact sell it, the attorney would have a field day going after a perjury case and in the meantime there is an unreviewed piece of property. This bill is proactive. The five year time limit and the 20 acre parcel remaining are both good amendments.

**Jennifer Madgic, Planner, Gallatin County.** She has had face-to-face and hands-on work with the family transfer exemptions. One-third of the family transfers coming through her office are evasions. They turn around and sell the parcels. Almost ten percent are being sold in 30 days or less. The family transfers are increasing. This is a way to make money. In real estate brochures, some land is being sold for as much as \$375,000 traded by family transfers in areas that would be questionable subdivisions. In some cases, some apply and go through the initial subdivision review and when they find out it is too expensive, they go through the family transfer route. It is approved. Their hands and the commissioners' hands are tied with the present language. It is frustrating. They can't control the number of lots that are being created. She supports the idea of farmers or large land owners being able to transfer land to family members, but this is not occurring. In Gallatin County there is a small percentage of agricultural land use owners who are taking advantage of this kind of transfer.

**Ann Hedges, MT Environmental Information Center.** She handed in testimony from Citizens for a Better Flathead **EXHIBIT(1os36a05)**. This is not a new issue. It has been going on a long time. No one has come up with a good solution. They had thought of requiring people to hold on to their land for five years. But the question is how do you make someone hold on to personal property for five years. It is probably illegal. This time, they felt they had to come up with something. The first idea was

to eliminate the exemption provision. It was being abused. The minor subdivision review is there. It is not that difficult to go through. There are very few requirements. In talking with the farming/ranching community, they decided that was not a good way to go. There are legitimate transfers of this property for agricultural use and the idea of keeping kids on the land these days is a great idea. They tried to narrow the exemption to make it workable and realistic in this growing state. In talking with John Youngbird, they looked at the farm bureau policies. Number six in their land use planning policies said they recommend that the gifting of parcels of agricultural land to heirs in portions of less than 160 acres would not be subject to review unless it is diverted from agricultural use. Two ideas that came about was one that it would go to the heirs and the second would require the land to be kept in use for agricultural purposes. If it is not to be used for agricultural purposes, the law would be circumvented. The number of acres was set at 20 acres. That amount might still be viable for agriculture. So the remainder of the land had to be 20 acres and somewhat viable for agricultural purposes. If the requirements are not met, there is the minor subdivision law. They do not have to go through major subdivision review. Minor subdivision law says they are exempt from preliminary plats from EA's, from public hearings, etc. It is a streamlined process. This bill would close a loophole in existing law.

**Marga Lincoln, Alternative Energy Resources Organization, Nonprofit.** She entered a letter from Joe Brennenman a dairy farmer from Flathead Valley **EXHIBIT (los36a06)**.

**Sam Samson, Jefferson County Commissioner.** He supports the family transfer concept. They have similar problems in their county. They have a committee for family transfers to eliminate false family transfers. It has not really worked well.

**Mike Griffith, former Lewis & Clark County Commissioner.** He had also experienced collusion between family members and other parties. There is a review committee; when a deed comes into the clerk and recorders office, it is up to the clerk to determine whether or not the deed passes muster. The clerk takes the document to the attorney general and hence the review committee determines the validity of the transfer. The owner has an opportunity for a review before the county commissioners. Trust plays a big part in the determination of this validity. Their intent would be recorded. If that trust is broken, it tears at the fabric of the community.

**Linda Stoll, MT Assoc. of Planners, Missoula County.** They are in support of the amended version of the bill.

**Harold Blattie, Stillwater County Commissioner.** They stand in support of the amended bill.

**Jane Jelinski, MT Assoc. of Counties.** They stand in support of the bill as amended.

**Opponents' Testimony:**

**Dennis Lay, MT Assoc. of Registered Land Surveyors.** He informed the committee that large landowners (over 160 acres) are subject to using the family transfer exemption if they give a piece of land that is less than 160 acres. The counties do have a review process in place. Lewis & Clark County have had three members on their committee and they can approve or deny an application under the current law. Missoula County has public hearings. The commissioners make the decisions to allow or not allow family transfers. There are vehicles available that would handle this situation. If this bill is passed it does infringe on the rights of property owners. There is just as much right and need to give a parcel to your mother or father as there may be to give it to a child. There is just as much right to give an acre of land to your son if you only own 20 acres or 5000 acres. As a surveyor, many times this happens if an aging mother needs a parcel of land. The five year moratorium is not good. There may be a necessity to sell the land before five years. Family transfers should not be considered only for agricultural purposes. Everyone has the right to give their property or possessions to anyone. There have been abuses, but there are always abuses.

**Andy Skinner, Helena Property Owners Assoc.** It seems that farmers are entitled to family land transfers but the private citizen isn't. That is setting one class against another class. All people should be entitled to give their property to family members. There are abuses. But it seems that some counties have dealt with it. Why should everyone suffer because some people tell lies. The concern of Gallatin County seems to be the possible loss of impact fees if there is a family land transfer. That is not a bad thing. A tax planner advises a person to give it to their children. If you don't, you will pay it all to the government. He is ready to gift his to his children. He wants to give his fifty acres to his children. With gifts to family members, they cannot stop him. When new growth policy groups design maps of preferred development areas and you happen to be in a disincentive area, you probably will be denied because you are not in the preferred area. A friend of his will be denied giving one acre of land to his son because he only owns a 20 acre piece. This would be the only way his son could own a house. There is always a cry for low income housing. This bill goes against that grain.

**Dave Wood, Helena.** He is concerned where this bill will take the state of Montana. The proponents bring it to the committee based upon abuse of the law. This bill is abuse of discretionary power which would allow government more control in an area they should not be allowed. It is a personal attack on his rights under the Constitution of Montana.

**Pat Bauernfeind, Montana City.** Approximately four years ago she had purchased a small amount of land. Her three children grew up there. Two of her children are working in the east. All three are college graduates. They have expressed an interest in returning to Montana to live on her land whenever possible. She owns approximately 45 acres. For each to have a portion under the proposed changes would stop her from giving them the land. She is engaged in agriculture. The sprawl rather than the cluster would prevent her from doing this. Agriculture is a supplement to her income. In order to live in Montana, people should be allowed to gift their land to their children no matter how much land they own. There are abuses but there are always people who will find a way around the law. Her testimony was entered **EXHIBIT (los36a07)**.

**Darren Breckenridge, Proctor.** He gave his testimony and handed in a written copy **EXHIBIT (los36a08)**.

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**Jeff Larson, Vice President, Flathead County Planning Board.** His big problem with the bill is the requirement of 20 acres that has to remain. Ninety-one percent of land owned by private people in Flathead County are under 21 acres in size. That means he and others are going to be discriminated against doing a family transfer. He wants his daughter to have some of his land. The Montana economy is not conducive to people for staying in Montana. Many times the only way kids can stay in Montana is to get a piece of property from their family. The other provision of the bill is having to hold on to the property for five years. There could be hardships that come along. They may need to sell that property. What are they suppose to do, go bankrupt. It is not a good option. In 1993 the occasional sale was eliminated. One solution would be to limit a sale to once in a lifetime. This would take the pressure away from the family transfer. People do these transfer because they get in an economic bind. It is the only way at the time. That is why the family transfers have gone way up. Some of his friends have depended on the family transfer so they could continue to live in Montana. One friend, his two brothers and parents bought a house on 20 acres. They all live in the same house, the youngest being 40 years old. They are doing a family transfer and that is the only way they

can have a place of their own to live in Montana. Two of the brothers work at Domino's Pizza and cannot afford to buy land for themselves. They can't build paved roads, cul-de-sacs, etc. Montana has enough economic problems without putting this on top of the people. They need this family transfer. Only nine percent of the people in Flathead County will be able to do a family transfer. That is not right. He handed in his own letter of protest **EXHIBIT(los36a09)**. He handed in a letter from the President of the Flathead County Planning Board and the Kalispell City-County Planning Board **EXHIBIT(los36a10)**. He also handed in an informational piece **EXHIBIT(los36a11)**.

**Sarah Bauer, Clancy.** She gave her testimony and handed in her written letter **EXHIBIT(los36a12)**.

**Gene Johnson, Stokes & Associates Consulting Engineers, Kalispell.** They do subdivisions and family transfers. He has been involved in these transfers for the past fourteen years. He had also been on the city/county planning board. He felt that he knew if someone was trying to evade the subdivision review law just as the planners and commissioners do. The committee has been led to believe that 46% of the transactions in Flathead County have been family transfers and all have been designed to circumvent the law. That is not true. Another statement that is not true is the minor subdivision review is an easy process. It is a \$500 to \$600 process that a family must pay if they want to deed over to their children property that may never be developed. He had just seen a case that would have cost the family \$98,000 for infrastructure. They were going to have to build roads and extend services to the lots. Four or five acres had to come out of the agricultural land for the road to be built that will ultimately yield to knapweed and thistles. Yes there are abuses. The 20 acre limitation will take in 91% of the available land in Flathead Valley. This is not a good law. Flathead County adopted a resolution called 509 and that is a review process. They are on 509 D. Each year it is being upgraded. The last upgrade was the five year requirement before transferring land. There are just as many circumstances circumventing minor and major subdivision reviews. There are always people who will do that. Leave it to the counties.

**Larry Marshall, Surveyor, Helena.** He did not believe anything was broken and nothing needed to be fixed. The subdivision laws of the early 1970's allowed for subdivisions under 20 acre parcels. That was removed and now only 160 acres are exempt. There used to be the occasional sale. That was used instead of the family transfer. The occasional sale was eliminated, thus the increase of family transfer use. Also the family transfer was restricted. It was restricted to one gift to one member in a

lifetime. Now the bill wants to eliminate parents. With the elderly society that is evident today, that is a tragedy. Estate planners tell you to get rid of your land or you will be taxed to death. He has five children and would like to give each one a gift of property. He is a surveyor in Helena and he has never had a subdivision review that has cost \$500. Normally a subdivision review has been more like \$5000. The process might be streamlined, but it takes about six months. That includes the planning process, the Department of Environmental Quality (DEQ) review and the county health dept. review. The sponsor said that family transfers do not get reviewed. They do get reviewed. Anything less than 20 acres has to go through the county health department for sanitary purposes. That review goes to DEQ. Many of the counties have developed a comprehensive plan. If a person owns land outside a preferred area and the land was 20 acres or less, that process would never be approved. There is only one avenue that is available. It is not an evasion of the act. It is to avoid the act.

**Steven J. Reese, Reese Surveying, Ltd.** He has eleven children and has put in a family exemption for all his children. He can verify that they are not breaking the law. Most counties follow the same rules but there are different ways. This is a big country and lots of land. It just needs to be handled right. He is opposed to the 20 acre provision.

**Questions from Committee Members and Responses:**

**SEN. DON HARGROVE** asked about the constitutional infringements on property owner rights. While this bill would adjust the way the exemptions are done, it would still tell a person what to do with their property. **Darren Breckenridge** responded that as he had quoted, the definition of discrimination is that of conferring a special privilege upon a group of people where there is no distinction between them.

**SEN. HARGROVE** again asked if there is any difference between the way the law is now and the way it would become. **Mr. Breckenridge** replied that the way the law is now people have equal access. If he owned two acres he could split. But with the new law, you have to have a larger estate in order to split an acre off and have 20 acres remaining.

**SEN. HARGROVE** wondered if it would be appropriate to have an effective date upon signature. **SEN. STONINGTON** said it would be a good idea.

**SEN. KEN TOOLE** asked a question of **John Youngbird, MT Farm Bureau**. Does the Farm Bureau have a position on this bill. **Mr.**

**Youngbird** responded that their policy doesn't directly mention the things that are included in the bill. Therefore they did not take a position on the bill. They had a meeting with the sponsor and looked at the bill and found no instances where the bill would affect the agricultural community.

**SEN. JOHN COBB** asked about one transfer per lifetime. Is that in statute somewhere. (The answer came later in the sponsor's close.)

**SEN. DUANE GRIMES** realized that it was the sponsor's intention to eliminate the ability of people as the opponents testified to transfer their property to family. The bill would restrict family transfers to agricultural families. **SEN. STONINGTON** said she owns 30 acres and could transfer a one acre lot to her children under this bill. The bill is attempting to close a loophole that is being abused. It is not attempting to prohibit any transfer. Transferring of land is possible. What it does is to say there needs to be some boundaries around where a family land transfer can be done without review for subdivision purposes. It is a balancing act between individual rights and public good. Individual rights are defined as the opponents have described them. The public good is described as she lives on 30 acres which was not formally a subdivision when it was built. Three years ago a cabin burned up above her land. The road had been just bulldozed up to the cabin. The fire trucks could not get up the road because it was not built to any sort of specs. That would be for the public good. That is being able to plan ahead and have a road that meets specifications so that fire and police protection can be provided. Everyone needs to share in the expense of the growth. Society has drawn those boundaries. This bill states there has been abuse and those boundaries need to be drawn more carefully. It does not prohibit anyone from doing a transfer of their property. If it doesn't meet these specifications, then a minor subdivision review must be done.

**SEN. GRIMES** asked what would happen if a family has more than one heir. **SEN. STONINGTON** said the bill would allow the family to do a single gift or sell, in each county the person owns property, to each of their children.

**SEN. GRIMES** asked how the sponsor would respond to the testimony that Gallatin County is just interested in the money they lose through family transfers and the impact fees. **SEN. STONINGTON** replied that planning is an attempt to say, ideally agriculture would be over here and urban development would be over there, etc. In Gallatin County where she lives which has a zoning board that oversees transfers like this, the zoning district will supercede this provision.

**SEN. HARGROVE** said that western Montana is practically subdivided by certificate survey into 20 acre lots. Are 20 acre lots excluded from this bill. **SEN. STONINGTON** responded no.

**CHAIRMAN MAHLUM** inquired by asking if a person sold three acres to a child, and a great opportunity comes along and he has to move and needs the money right now, would this bill allow him to sell those three acres. **SEN. STONINGTON** said that the child could sell that land but it would have to go through a minor subdivision review before the sale because it happened within the five years. The subdivision review cost could be taken out of the sell price of the land.

**SEN. GRIMES** asked about the end amendment where it mentions covenant. **Mr. Youngbird** answered if the covenant runs with the land into perpetuity, the land could never be sold.

**Closing by Sponsor:**

**SEN. STONINGTON** closed. She wants the committee to think about the purpose for having a subdivision law is that as communities grow and land is subdivided, it is important to look at the impact upon neighbors. Subdivision laws are intended to do that. They define when and how, with the review of the elected officials, land will be subdivided. This provision is being abused. It needs to have an application where it works, where it is fair and justified. Some of the opponents said things like what about my rights. Well, what about your neighbors' rights. We all have rights. This is a balancing act between my rights and my neighbors' rights. People live in communities and this bill is addressing that fact. In response to **SEN. COBB'S** question, on line 18 and 19 of the current law, several people have said they won't be able to transfer their land. They can still transfer their land. It just requires them to go through a minor subdivision review. The one amendment that she would be willing to remove is the restriction to children only. There are valid cases where land should be transferred to a parent or spouse. If there has to be a covenant with the land, that could come off at the end of five years as suggested by **Mr. Youngbird**. That would be sufficient to give society the ability to have a subdivision law that works right.

***{Tape : 2; Side : B; Approx. Time Counter : 0}***

**HEARING ON SB 433**

**Sponsor: SEN. JIM ELLIOTT, SD 36, TROUT CREEK**

**Proponents:** Jane Jelinski, MT Assoc. of Counties  
Linda Stoll, MT Assoc. of Planners, Missoula  
Sam Samson, Jefferson County Commissioner  
Frank Nelson, Madison County Commissioner

**Opponents:** Al Kington, MT Forest Coalition of Counties  
Donna Savalsted, Beaverhead County Commissioner  
Dale Williams, Flathead County Commissioner

**Informational Testimony:** Greg Petesch, Legislative Staff

**Opening Statement by Sponsor:**

**SEN. JIM ELLIOTT, SD 36, TROUT CREEK.** This bill seemed to come with a consensus, but there appeared to be some division. It is a Committee Bill which would provide counties with the payment options contained in federal law for receiving their portion of forest reserve funds and specifying how the funds must be distributed, depending on the payment options chosen. Traditionally, timber counties have received 25% of the gross receipts from the sale of timber within those counties. With the declining timber industry, those receipts have diminished as well. Through a federal law, the counties can choose the higher of the two amounts. They may choose the 25% of timber money or they may take a full payment option. That option is the average of the three highest years of the 25% money between 1986 and 1999. In the first handout **EXHIBIT (los36a13)**, it shows those amounts and the differences. The law does not need to be changed for the counties to do this. However, the federal law stipulates that if the county chooses to take full payment, they may elect to devote 15-20% of that payment for various projects within that county and with the forest service. On the second sheet, it shows how the money flows with different options.

Under current Montana law, the proponents believe that the counties do not have jurisdiction to dedicate 15% of those monies. That is in statute shown on page 2, line 15, subsection (7). Two-thirds must be dedicated to county roads and one-third to county schools.

If they want the full payment option and want to dedicate that 15-20% to other projects, statutory language must be put into Montana law. That language is on page 2, line 1.

**Proponents' Testimony:**

**Jane Jelinski, MT Assoc. of Counties.** They are in support of the bill. This bill was brought to the committee by **Gordon Morris, Executive Director, MT Assoc. of Counties.** The change in the federal legislation had to be reflected in a change in Montana's statute. This would give counties more flexibility in their decision making. She handed out an synopsis of the bill **EXHIBIT(los36a14)**.

**Linda Stoll, MT Assoc. of Planners, Missoula.** She felt the county treasurers need the option, and not the state, in how to distribute the money. The federal law states how the money is to be handled and this bill would put into Montana statute the back-up to that federal law.

**Sam Samson, Jefferson County Commissioner.** This bill codifies HR 2389 derived from the Secure Rural Schools and Community Self-Determination Act of 2000 which releases \$1.1 billion dollars to counties over the next five years. Jefferson County gained \$88,000 in 1999. The 15-20% is an asset and not a liability because Title II and Title III allows the counties to do land or county projects which normally could not be done. This would also allow for better long-term budgeting.

**Frank Nelson, Madison County Commissioner.** He was in support of the bill.

#### **Opponents' Testimony:**

**Al Kington, MT Forest Coalition of Counties.** He has worked for the past 20 years with the county revenue sharing program. He handed out informational sheets **EXHIBIT(los36a15)** that explained his opposition to the bill. He then spoke on that information.

**Donna Savalsted, Beaverhead County Commissioner.** In working to get the federal law changed, they wanted to make sure that a new law would not be needed in Montana statute. They wanted the counties to be able to work with the forest service and not at the end of an "economic gun." The first figures passed out are very misleading and don't really tell the whole story of what this bill will do. Counties, before they make a determination of which way they will choose to go, need to consider their 10-year average. Another issue is the amount of burnt timber that will need to be harvested in the areas that have suffered fire loss. Basically, the 15% full payment option will probably only affect three or four counties. All the counties that it will affect are in opposition of the bill.

**Dale Williams, Flathead County Commissioner.** He is the Chairman of the MT Coalition of Forest Counties which was begun two years ago. There are 28 counties as members. He has been involved in this legislation for the past four years. The Board of the MT Coalition is made up of commissioners from Flathead, Lincoln, Ravalli, Beaverhead, Mineral, Sanders and Powder River. Without exception they oppose SB 433 as being redundant and unnecessary. S.1608 is the signed bill by President Clinton dealing with the Revitalization Act **EXHIBIT(los36a16)**. He did not feel the title of SB 433 was relevant to the text of the bill. He then referred to MCA 7-6-2111 of the Financial Administration & Taxation **EXHIBIT(los36a17)**. It tells how county treasurers are to handle all monies. Section 1, (3) of the bill does not coincide with S.1608, page 8 "Counties with minor distribution." This was intentionally done so as not to make counties with under \$100,000 go through the litany of processes which is required for those other counties with over \$100,000. There is no provision by which the state treasurer can receipt these funds or even acknowledge these funds. Yet in S.1608, the state treasurer does not receive these funds. Those funds are held by the U.S. Treasury for expenditure by the counties.

**A third tape was inserted at this time. It was not a good tape. Approximately 3 minutes of Commissioner Dale Williams' testimony was not recorded.**

***{Tape : 3; Side : A; Approx. Time Counter : 0}***

This bill is redundant, superfluous and is not necessary. One other thing. If all public laws that are enacted by Congress need to have the direct intervention of the state to enable the treasurer of the counties to receipt payment, where are the public laws dealing with the grants from the federal government to the sheriffs and law enforcement officers or the EDA. There is no language necessary because of the primacy of federal law. It is dictated within S.1608 to a sufficient manner. He handed in a letter from Scott B. Spencer, Attorney at Law **EXHIBIT(los36a18)**.

**Informational Testimony:**

**Greg Petesch, Legislative Staff.** He had been asked by Gordon Morris, Director, MT Assoc. of Counties, his opinion whether it was appropriate to have the state implement the new federal law. He advised Mr. Gordon that it would be appropriate. After listening to all the testimony, the worst comments about the bill were that it was redundant. At worst, the bill does no harm.

However, looking at state statute Section 17-3-211 it states that for purposes of carrying out 16 USC 500 and all acts subsequent thereto, this is how the money is distributed. While 16 USC 500 was the original forest reserve portion. He felt that public law 106-393 is an act subsequent to that enactment because the forest counties are receiving additional funding. A statute is not needed to implement every federal law. Enacting statute to implement a federal law, he believed, was the correct way to go. Where the federal government has provided additional flexibility, the state should ensure that flexibility. Local governments, whether a general government local government or a self-governing government, have different ways of doing things. A general government local government can only do what state law allows. A self-governing government can do whatever their charter provides. The whole purpose of the bill was to make sure that counties have the flexibility that the new federal law provided because of the language in 17-3-211. He considered this public law to be an act subsequent to 16 USC 500 and as stated this bill codifies federal law in state statute. Without this bill the counties could get this money and use it. But Montana does have state statute and it should conform to the federal law. If it is superfluous, so be it. But it certainly does no harm.

**Questions from Committee Members and Responses:**

**SEN. BILL GLASER** was still confused about who received the money and if the bill changed anything. His concern was how distribution goes to roads and schools. Does it affect the Gross Tax Base (GTB). **Greg Petesch** answered no. The portion that had been received before will still be allocated according to the formula.

**SEN. GLASER** asked about the counties who would get no additional revenue. Would that be handled the same way. **Mr. Petesch** answered yes.

**SEN. GLASER** did not understand the opposition to the bill. If the bill codifies the law, what is the problem. **Dale Williams** said that portion three is in error. In relationship to the minimal county portions that are contained in S.1608, the bill is wrong in his opinion. To suggest there is a formula or funding mechanism for directing distribution of these monies to the county treasurers is also wrong. If one refers to public statute 17-3-211 with respect to the state treasurer, it would seem the wrong bill is being amended.

**SEN. GLASER** asked if there was a need to fix the bill. **Mr. Petesch** replied that if subsection three does not conform to

federal law, then that would be an error. He would be glad to review that and fix it.

**Closing by Sponsor:**

**SEN. ELLIOTT** closed. The turn of events have been a surprise to him. If the bill is redundant, there does not seem to be a need for it. He suggested that the proponents and opponents should get together and come to a consensus. Otherwise, the bill can be dropped.

**EXECUTIVE ACTION ON SB 226**

**Motion:** **SEN. MILLER** moved that **SB 226 DO PASS.**

**Discussion:**

**SEN. EMILY STONINGTON** was very disturbed about this bill. This bill will expose for sale all mailing lists owned by the state. This bill repeals the section of law 2-6-109 which is the prohibition of the distribution for sale of mailing lists. The managing of a mailing list is a very expensive and extensive job. This bill would commit the state to the management of those list. There should be a large fiscal note.

**SEN. JOHN BOHLINGER** said it would not be incumbent upon the state to furnish every requested list for free. It is not an infringement upon anyone's rights who might find some information beneficial or useful.

**SEN. STONINGTON** wanted to know if she could remove her name from those lists. **SEN. BOHLINGER** said she could withdraw her name from the process.

**SEN. STONINGTON** then said that would definitely encumber the state to take responsibility of those lists. **SEN. BOHLINGER** said that this could be a revenue producing opportunity for the state.

**SEN. JOHN COBB** said that in the testimony, all names are public record but the law says it can't be given out. One couldn't remove their name anyway.

**SEN. STONINGTON** said the state has tried to control this by saying "yes" it is a matter of public record, but if you want to access that public record, you have to come in and copy it down by hand.

**SEN. KEN MILLER** said that according to Greg Petesch, the current restrictions are unconstitutional because it is public information and cannot be withheld. The sponsor's attempt was to abide by what the constitution requires. As far as selling lists, he felt it would take additional legislation to allow government to sell that information.

**SEN. CHRIS CHRISTIAENS** said that he had not been at the hearing and was at a disadvantage. One issue was which public records are being spoken of. Are the records from drivers' licenses, fishing and hunting licenses, etc. There has been a hue and cry over social security numbers on hunting licenses. He was not sure where this bill would take the state. He did not feel that this bill was the way to go.

**Vote:** Motion failed 4-6 with Christiaens, Cobb, Elliott, Mahlum, Stonington, and Toole voting no. A roll call vote was taken.

**Motion:** SEN. MILLER moved that SB 226 BE AMENDED  
**EXHIBIT**(los36a19).

**Discussion:**

**SEN. MILLER** explained the amendment. It strikes the repealing of Section 2-6-109; it inserts the words that allow a public school to provide lists of students to armed forces recruiters.

**CHRISTIAENS** asked what if the students do not want their names submitted to the armed forces.

**MILLER** said he didn't believe that they could. If it is a public list, it is available to anyone. It is just that it has been restricted in how the lists would be made available. The recruiters could have the lists sent to them.

**MAHLUM** said that the amendment has made the bill a good bill. It helps a lot of graduating high school students to get a higher education that they might not have gotten before. Scholarships and programs can be presented to the students.

**CHRISTIAENS** reiterated that those students do not have the option to take their name off those lists.

**Vote:** Motion that SB 226 AMENDMENT BE ADOPTED was tied with a 5-5 vote with Christiaens, Cobb, Elliott, Stonington, and Toole voting no.

**{Tape : 3; Side : B; Approx. Time Counter : 0}**

SEN. DUANE GRIMES was given 24 hours to record his vote. He voted the next day with a yes vote. The amendment carried 6-5. Further executive action was taken on February 15, 2001. Senate Bill 226 did pass as amended on February 15, 2001.

ADJOURNMENT

Adjournment: 7:00 P.M.

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SEN. DALE MAHLUM, Chairman

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MARY GAY WELLS, Secretary

DM/MW

**EXHIBIT** (los36aad)